

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A :

JUDGE, NO. 01-244 :  
2670

CASE NO.: SC01-

(Judge Charles W. Cope) :  
\_\_\_\_\_:

IN LIMINE MOTION TO EXCLUDE ALL EVIDENCE OF  
STATEMENTS MADE DURING CUSTODIAL INTERROGATIONS  
OR IN THE ALTERNATIVE MOTION TO DISMISS COUNT I

The Honorable Charles W. Cope, through the undersigned counsel, respectfully requests this Commission to enter an order excluding all evidence relating to statements made by Judge Cope during custodial interrogations from use in the hearing in this cause, including but not limited to the videotape of Judge Cope's custodial booking interrogation and the testimony of Officer Nash and Corporal Nyant. In the alternative, Judge Cope moves this Commission to dismiss Count I. In support of this requested relief, Judge Cope states the following:

1. Special Counsel has listed as an exhibit that he intends to use in the final hearing before this Commission a videotape recording of the booking interrogation of Judge Cope in Carmel By The Sea, California. Special Counsel has also listed Officer Nash and Corporal Nyant as witnesses to be called in this cause.

2. The custodial interrogations of Judge Cope on the street in the early morning hours of April 5, 2001 and the subsequent custodial booking interrogation of Judge Cope shortly thereafter were both conducted in

violation of Judge Cope's Sixth Amendment right to counsel and Fifth Amendment right to remain silent.

3. Count I of the Amended Notice of Formal Proceedings filed by Special Counsel expressly charges Judge Cope with being so intoxicated in the early morning hours of April 5, 2001, that Judge Cope could not remember what he did or where he went. Judge Cope admits that he was intoxicated in the early morning hours of April 5, 2001. In fact Special Counsel asked the following questions and Judge Cope gave the following answers in deposition relating to the booking interrogation.

Special Counsel: And is one of those circumstances the fact that you were intoxicated?

Judge Cope: One of those circumstances, yes. The answer is yes.

Special Counsel: If you had acted that way without being intoxicated, do you think your conduct still would have been appropriate? (Objection)

Judge Cope: I probably would not have acted that way if I was not under the influence.

Special Counsel: Okay. But if you had acted that way while you were not under the influence, would you agree that it was inappropriate? (Objection) ...

Judge Cope: The answer is no, I would not have acted that way.

(Cope Depo page 505-507.)

Special Counsel: Did you answer appropriately for a sober judge?

Judge Cope: One, I told you that I was intoxicated.

Special Counsel: I understand. I'm trying to determine if the intoxication caused you to act inappropriately.

Judge Cope: Mr. Mills, I acted under the circumstances as I acted. You're trying to determine if the intoxication affected the way that I acted. The answer is yes.

(Cope Depo page 509.)

4. It is undisputed that Judge Cope was in police custody at the time of such interrogations and that he did not have his counsel present. It is also clear that Special Counsel wished to enter the videotape recording of the booking interrogation and the testimony of Officer Nash and Corporal Nyant regarding statements allegedly made by Judge Cope during the custodial interrogations into evidence in this cause because Special Counsel believes such to incriminate Judge Cope.

5. Given that Judge Cope was intoxicated during the custodial interrogation any purported waiver of his right to remain silent and have counsel present was not made knowingly and voluntarily. See Jorgenson v. State 714 So.2d 423 (Fla. 1998).

6. The law is well established that the state has a "heavy burden" to establish that a Defendant's statement was voluntary and that any purported waiver of constitutional rights was knowing and voluntary,

e.g., Brewer v. State, 386 So.2d 232, 236 (Fla. 1980), Jorgenson, 714 So.2d at 426; C.W. v. State, 779 So.2d 462 (Fla.2d DCA 2000). Special Counsel can not meet its burden of establishing that Judge Cope's statements made during the custodial interrogations of him in the early morning hours of April 5, 2001, was voluntarily made or that the purported waiver of his constitutional right to counsel and to remain silent were made knowingly and voluntarily. Accordingly, this Commission is required to exclude all evidence concerning statements made by Judge Cope during the course of such interrogations. See Jorgenson.<sup>1</sup>

7. Special Counsel can not have both his cake and eat it too. This Commission must either dismiss Count I of the Complaint or preclude admission of all evidence concerning statements allegedly made by Judge Cope during custodial interrogations while he was intoxicated.

WHEREFORE, Judge Cope respectfully requests this Commission to enter an order excluding all evidence concerning statements made by Judge Cope during custodial interrogations from the final hearing in this cause, including but not limited to exclusion of the video recording of Judge Cope's booking interrogation in Carmel By The Sea, California and

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<sup>1</sup> But see The Florida Bar v. Lancaster, 448 So. 2d 1019 (Fla. 1984) (holding exclusionary Florida Bar proceedings after lawyer has plead no contest to the criminal charges the charges levied against Judge Cope track pending criminal charges filed against Moreover, Judge Cope has pled not guilty to the criminal charges pending against his having to defend against such alleged statements in this proceeding could irritate his rights in the pending criminal proceedings.

testimony of officer Nash and Corporal Nyant concerning alleged statements made by Judge Cope. In the alternative, Judge Cope requests this Commission dismiss Count I of the Amended Notice of Formal Proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to: Judge James R. Jorgenson, Chair of the Judicial Qualifications Commission Hearing Panel, 3<sup>rd</sup> District Court of Appeal, 2001 S.W. 117<sup>th</sup> Avenue, Miami, Florida 33175-1716; John Beranek, Esq., Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; John S. Mills, Esq., Special Counsel, Foley & Lardner, 200 Laura Street, Jacksonville, Florida 32201-0240; Brooke S. Kennerly, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Thomas C. MacDonald, Jr., Esq., General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, this \_\_\_\_\_ day of June, 2002.

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**ROBERT W. MERKLE, ESQ.**



Judge James R. Jorgenson  
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